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No. 92-1313

In The

Supreme Court of the United States

October Term 1992

SACRAMENTO COUNTY BOARD OF SUPERVISORS,

Petitioner,

v.

SACRAMENTO COUNTY LOCAL AGENCY FORMATION COMMISSION,

Respondent.

On Petition For A Writ Of Certiorari To The California Supreme Court

RESPONDENT'S BRIEF IN OPPOSITION

NANCY C. MILLER*
KIRK E. TROST
MATINA R. KOLOKOTRONIS
HYDE, MILLER & OWEN
428 J Street, Suite 400
Sacramento, CA 95814
Telephone: (916) 447-7933
Attorneys for Respondent Sacramento Local Agency Formation Commission

*Counsel of Record

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTION RESTATED

Does a California statute granting voting rights in incorporation elections only to residents within the proposed city boundaries violate the Equal Protection Clause of the Fourteenth Amendment?

TABLE OF CONTENTS

Page

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iii

RESTATEMENT OF THE CASE 1

I. STATEMENT OF FACTS 2

II. COURSE OF PROCEEDINGS 4

REASONS FOR DENYING THE WRIT 6

I. STATE STATUTES GOVERNING INCORPORATION ELECTIONS ARE PROPERLY REVIEWED UNDER THE RATIONAL BASIS STANDARD 8

II. SECTION 57103 DOES NOT "FENCE OUT" A CLASS OF VOTERS BECAUSE OF THE WAY THEY MAY VOTE 17

CONCLUSION 19

TABLE OF AUTHORITIES

Page

CASES

Board of Supervisors v. Local Agency Formation Comm'n, 3 Cal. 4th 903, 13 Cal. Rptr. 2d 245, 838 P.2d 1198 (1992) ..... *passim*

Burdick v. Takushi, 112 S. Ct. 2059 (1992) 12, 13

Carrington v. Rash, 380 U.S 89 (1965) 9, 13, 17

Cipriano v. City of Houma, 395 U.S. 701 (1969) 11

Citizens Against Forced Annexation v. Local Agency Formation Comm'n, 32 Cal. 3d 816, 187 Cal. Rptr. 423, 654 P.2d 193 (1982) 5

City of New York v. State, 158 A.D.2d 169, 557 N.Y.S.2d 914 (N.Y. App. Div. 1990), *aff'd*, 76 N.Y.2d 479, 562 N.E.2d 118 11

Evans v. Cornman, 398 U.S. 419 (1969) 13

Fullerton Joint Union High School Dist. v. State Bd. of Educ., 32 Cal. 3d 779, 187 Cal. Rptr. 398, 654 P.2d 168 (1982) 5, 18

Givorns v. City of Valley, 598 So. 2d 1338 (Ala. 1992) 12

Gomillion v. Lightfoot, 364 U.S. 339 (1960) 11

Gray v. Saunders, 372 U.S. 368 (1963) 9

Hill v. Stone, 421 U.S. 289 (1975) 16

Holt Civic Club v. Tuscaloosa, 439 U.S. 60 (1978) 11, 12, 15, 16

TABLE OF AUTHORITIES – Continued

Page

Hunter v. Pittsburgh, 207 U.S. 161 (1907) 10

Kramer v. Union Free School Dist., 395 U.S. 621 (1969) 11

Kusper v. Pontikes, 414 U.S. 51 (1973) 14

Little Thunder v. State of South Dakota, 518 F.2d 1253 (8th Cir. 1975) 12

Lockport v. Citizens for Community Action, 430 U.S. 259 (1977) 11, 13, 14, 16, 18

Moorman v. Wood, 504 F. Supp. 467 (E.D. Ky. 1980) 11

People v. Saunders, 51 Cal. 3d 471, 273 Cal. Rptr. 537, 797 P.2d 561 (1990) 5

Phoenix v. Kolodziejski, 399 U.S. 204 (1970) 11

Plyler v. Doe, 457 U.S. 202, reh'g denied, 485 U.S. 1131 (1982) 6

Rosario v. Rockefeller, 410 U.S. 752, reh'g denied, 411 U.S. 959 (1973) 14

St. Louis County, Mo. v. City of Town and Country, 590 F. Supp. 731 (E.D. Mo. 1984) 11

CONSTITUTIONAL AND STATUTORY PROVISIONS

Cal. Const., art. 11, § 1(a) (West Supp. 1993) 2

Cal. Const., art. 11, § 2 (West Supp. 1993) 2

Cal. Gov't Code §§ 56000 et seq. (West Supp. 1993) *passim*

TABLE OF AUTHORITIES – Continued

Page

Cal. Gov't Code § 56001 (West Supp. 1993) 13, 17

Cal. Gov't Code § 56021(a) (West Supp. 1993)..... 2

Cal. Gov't Code § 56069 (West Supp. 1993) 2

Cal. Gov't Code § 56375(a) (West Supp. 1993)..... 2

Cal. Gov't Code § 56750 (West Supp. 1993) 2

Cal. Gov't Code § 56836(b) (West Supp. 1993)..... 2

Cal. Gov't Code § 57103(a) (West Supp. 1993)... *passim*

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**On Petition For A Writ Of Certiorari
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RESPONDENT'S BRIEF IN OPPOSITION

RESTATEMENT OF THE CASE

Respondent must clarify portions of Petitioner's Statement of the Case.

A new city can be created in the State of California by citizen petition pursuant to the Cortese-Knox Local Government Reorganization Act of 1985. Cal. Gov't Code §§ 56000 *et seq.* (West Supp. 1993) (hereinafter "Cortese-Knox Act"). The petition must be signed by at least twenty-five percent (25%) of the registered voters within

the proposed city boundaries. Cal. Gov't Code § 56750 (West Supp. 1993). In 1986, sufficient signatures were gathered to commence review by the Sacramento Local Agency Formation Commission of the proposal to incorporate the city of Citrus Heights, whose population was, at that time, approximately 69,000 persons.

I.

STATEMENT OF FACTS

Petitioner, the Sacramento County Board of Supervisors, is the existing local government within the Citrus Heights area. If incorporation is successful, the County would retain jurisdiction over the area for state government purposes, but local police power and land use authority would rest with the new city. Cal. Const., art. 11, §§ 1(a), 2 (West Supp. 1993).

The filing of a citizen petition does not ensure that an incorporation proposed will be placed on the ballot. Under the Cortese-Knox Act, the Local Agency Formation Commission (hereinafter "LAFCO") is charged with reviewing the petition and conducting public hearings on the matter. Cal. Gov't Code §§ 56021(a), 56069, 56375(a), 56836(b) (West Supp. 1993). Rather than reiterate the numerous protections contained in the Cortese-Knox Act to check and balance the competing interests of local government, Respondent respectfully refers the Court to the California Supreme Court's discussion in the decision below. *See Board of Supervisors*, 3 Cal. 4th at 909-912 (Pet. App. at 5a-10a.)

Contrary to Petitioner's assertion that "it is undisputed that the incorporation of the City of Citrus Heights will cause a significant loss of revenue to the County" (Pet. at 6 n.4), no such impacts are established by the record below. Indeed, at the commencement of the LAFCO proceedings, documents were filed with LAFCO claiming that the incorporation as proposed would have an adverse financial impact upon Sacramento County. However, the proponents of incorporation also filed numerous documents disputing the severity of this impact. As a result, LAFCO adopted several measures and conditions on the incorporation proposal to mitigate these impacts. *Board of Supervisors*, 3 Cal. 4th at 908 (Pet. App. at 3a.)

These measures (discussed by the California Supreme Court) included excluding several sales tax-rich shopping centers from the proposed area of incorporation and requiring that the new city's receipt of property taxes be phased in more slowly. *Id.* Disengenuously ignoring these mitigation measures and conditions, Petitioner's "Selected Excerpts from the Administrative Record Below" (Pet. App. at 86a-105a) *predate* the mitigation measures and conditions imposed by LAFCO.[1] *Board of*

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[1] *See* Pet. App. E: "Selected Excerpts from the Administrative Record Below". The one exception is the Memorandum dated May 24, 1988, from the County Executive to the Board of Supervisors. While this Memorandum was submitted after the lengthy LAFCO hearing process and contained an estimate of financial impacts that LAFCO disputed, LAFCO in fact used that estimate as a basis for concluding that the financial impacts of incorporation were not severe. *Board of Supervisors*, 3 Cal. 4th at 923 (Pet. App. at 23a-24a.)

Supervisors, 3 Cal. 4th at 907-09, 922-23 (Pet. App. at 3a-4a; 23a-24a.)

The trial court found that LAFCO's mitigation measures and conditions resulted in insubstantial financial impacts on Sacramento County. (Pet. App. at 81a, 83a.) By unanimous decision, the California Supreme Court agreed. *Board of Supervisors*, 3 Cal. 4th at 907-09, 923 (Pet. App. at 2a-4a, 24a.)

Finally, as discussed more fully below, Respondent disputes Petitioner's contention that the state law granting voting rights in incorporation elections only to residents within the proposed city boundaries excludes a class directly and substantially affected by the incorporation.

II.

COURSE OF PROCEEDINGS

The trial court did not, as Petitioner claims at page 7 of the Petition, find substantially different interests between annexations and incorporations. The trial court rendered an *oral* statement of decision which is attached to the Petition at Appendix C. This Court will recognize that an oral statement of decision can be less precise than a written one. Nonetheless, the trial court found a *lack of evidence* to support the County's claim that the voting franchise was unconstitutional and found no abridgement of the franchise in an incorporation. (Pet. App. at 83a.)

Not surprisingly, Petitioner relies most heavily on the opinion of the Third District Court of Appeal. (Pet. at 7-10.) It is important to note that the appellate court, in rendering its decision, relied primarily on two California Supreme Court cases, *Citizens Against Forced Annexation v. Local Agency Formation Comm'n*, 32 Cal. 3d 816, 187 Cal. Rptr. 423, 654 P.2d 193 (1982), and *Fullerton Joint Union High School Dist. v. State Bd. of Educ.*, 32 Cal. 3d 779, 187 Cal. Rptr. 398, 654 P.2d 168 (1982).

However, the California Supreme Court subsequently determined that these cases, *Citizens* and *Fullerton*, were not controlling authority. *Fullerton* was a plurality opinion that lacked authority as precedent. *Board of Supervisors*, 3 Cal. 4th at 918 (Pet. App. at 17a.) The court found *Citizens*, in which a bare majority concurred, constitutionally infirm and not to be followed to the extent inconsistent with the ruling in this case. *Id.* at 920-921 (Pet. App. at 20a-21a.) The California Supreme Court has thus removed the foundation upon which the appellate decision relied.

Likewise, Petitioner's characterization of the California Supreme Court's ruling requires clarification. The California Supreme Court did not find, as stated in the Petition at page 12, that there was just "some fair relationship," between the voting franchise and a legitimate state purpose. Rather, the court held that, "Giving section 57103 the presumption of constitutionality to which every statute is entitled (*People v. Saunders*, 51 Cal. 3d 471, 495, 273 Cal. Rptr. 537, 797 P.2d 561 (1990)), we conclude that

it *must* be given effect if it bears some fair relationship to a legitimate public purpose. (*Plyler v. Doe*, 457 U.S. 202, 206.)" *Board of Supervisors*, 3 Cal. 4th at 923 (Pet. App. at 24a.)

The court then applied the "fair relationship" test to the facts presented and held that the legislature's expressed statutory policy evidenced a legitimate purpose and that Section 57103 was fairly related to that purpose. Recognizing that the Cortese-Knox Act contained an elaborate mechanism to balance the competing political forces present in many government reorganization requests, the California Supreme Court concluded that the Cortese-Knox Act "was constructed with a mighty bulwark against the exercise of arbitrary discretion." *Id.* at 924 (Pet. App. at 25a.)

Contrary to Petitioner's statement on page 13, the California Supreme Court did not find that the state statute resulted in the "disenfranchisement of a class of otherwise qualified voters." Rather, the court held that the "mere fact that a state law touches on the right to vote does not necessarily require the application of strict scrutiny." *Id.* at 914 (Pet. App. at 12a.) In analyzing the facts of the case, the court determined that the application of the rational basis test was the appropriate constitutional test. Ruling that the Cortese-Knox Act survived this analysis, the court properly applied federal precedent.

REASONS FOR DENYING THE WRIT

The California Supreme Court's decision does not conflict with any decision of this Court or any other

court. The decision below turned on its own facts and it will affect few others than the litigants. In its ruling, the California Supreme Court actually chose not to follow its previous rulings because the court found it impossible to reconcile those decisions with the "federal high court's prescription." *Id.* at 920-921 (Pet. App. at 20a.)

Contrary to Petitioner's assertion, this case does not raise an unsettled constitutional issue of national significance. (Pet. at 12.) To Respondent's knowledge, in an incorporation election, *no state grants the right to vote to persons residing outside the boundaries of the proposed city.*[2]

Although the petition is unclear as to whether the constitutional challenge to section 57103 is a "facial" or "as applied" challenge, Petitioner seeks to have this Court determine that Sacramento County residents be treated differently from every other County in the nation. The constitutional question here is not substantial. Petitioner's rights are adequately protected by the state statutory process for municipal creation adopted by the California legislature.[3] In this case there is no substantial

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[2] While Petitioner cites numerous state statutes in the Petition's footnotes, all these statutes reference either municipal detachment or incorporation. None of the statutes allow residents outside the proposed area of an incorporation to vote. (Pet. at 10 n.6, 14 n.8.) (Detachment occurs when voters within an existing municipality desire to detach and join another city or form their own. Incorporation is the creation of a municipality.)

[3] The factual controversy in this case is not material. Petitioner cites to selected documents in the record below which were prepared *prior* to the mitigation measures adopted by Respondent to lessen the financial impacts of incorporation. *See*

financial detriment to persons residing outside the boundaries of the proposed incorporation. *Id.* at 923 (Pet. App. 23a-24a.) In addition, the decision by the California Supreme Court preserves the uniformity of decisions of other states and of this Court.

I.

STATE STATUTES GOVERNING INCORPORATION ELECTIONS ARE PROPERLY REVIEWED UNDER THE RATIONAL BASIS STANDARD.

The sole issue for review in the California Supreme Court was whether California Government Code section 57103 was unconstitutional as applied in Sacramento County. Section 57103 grants voting rights in an incorporation election to only those residing within the proposed boundaries of the new city.

The California Supreme Court *unanimously* ruled that the statute survived a "facial" as well as an "as applied" challenge under the federal and state due process clauses. *Board of Supervisors*, 3 Cal. 4th at 907 (Pet. App. at 1a.) Petitioner argues that the court improperly applied the "rational basis test" to the statute and should have reviewed the statute under the more rigorous "strict scrutiny" test. (Pet. at 15.) However, the California Supreme

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supra at 3-4. Respondent believes Petitioner incorrectly conveys to this Court that these impacts were not addressed. (*See* Pet. at 5-6, 9-10.) The Administrative Record in this case exceeds eleven (11) volumes and over three thousand (3000) pages of documents. After factoring the mitigation measures imposed by Respondent, the trial court and the California Supreme Court did not find any unusual or significant financial impacts. *Board of Supervisors*, 3 Cal. 4th at 922-23 (Pet. App. at 23a-24a.)

Court's treatment is fully consistent with the decisions of this Court, including *Carrington v. Rash*, 380 U.S 89 (1965).

In *Carrington*, the Texas Constitution absolutely prohibited servicemen and women from registering to vote. *Id.* No other state in the union had such a restrictive franchise. *Id.* at 93. The rationale for this provision was to protect the state from "transients" and to prevent the concentrated balloting of military personnel. *Id.* However, the statute effectively deprived all who wore a uniform the right to vote, no matter how long they had lived in the State of Texas. The Court concluded that "[T]here is no indication in the Constitution that occupation affords a permissive basis for distinguishing between qualified voters within the State." *Id.* at 96, *quoting Gray v. Saunders*, 372 U.S. 368, 380 (1963). The Court struck down the classification as unreasonable and lacking a rational basis for its breadth. The Court also indicated that the State could reach its goals of requiring bona fide residence by a less restrictive means. *Id.* at 93, 96.

In contrast to our case, no state extends voting rights to persons outside the proposed boundaries of an incorporation to our knowledge. *Carrington* supports application of the rational relationship standard of review, since there exists a permissive basis for distinguishing between voters within the proposed boundaries of incorporation and those outside.

Carrington does not mandate that all persons with varying interests in an election are constitutionally entitled to vote. In fact, *Carrington* is one of a long line of unbroken authority recognizing the state's broad power to regulate municipal elections and confine the vote to those most interested in the election.

In the seminal constitutional case challenging state regulation of local government organization, *Hunter v. Pittsburgh*, 207 U.S. 161, 178-179 (1907), this Court described that broad power as follows:

> Municipal corporations are political subdivisions of the State, created as convenient agencies for exercising such of the governmental powers of the State as may be entrusted to them. . . . The number, nature and duration of the powers conferred upon these corporations and the territory over which they shall be exercised rests in the absolute discretion of the State. The State . . . at its pleasure may modify or withdraw all such powers . . . expand or contract the territorial area, unite the whole or a part of it with another municipality, repeal the charter and destroy the corporation. All this may be done, conditionally or unconditionally, with or without the consent of the citizens, or even against their protest. In all these respects, the State is supreme, and its legislative body, conforming its action to the state constitution, may do as it will, unrestrained by any provision of the Constitution of the United States.

Petitioner claims that the reliance on *Hunter* by the California Supreme Court was misplaced, and argues that the state's power to create municipalities is qualified by a citizen's right to vote. (Pet. at 19.)[4] We do not read Petitioner's cited cases so broadly.

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[4] Petitioner alleges the California Supreme Court failed to take note that in the *Hunter* case, the First Assignment of Error was rejected. (Pet. at 18 n.10.) However, the *manner* of the due process violation was set forth in the First Assignment of Error and was properly quoted by the Court. *Hunter*, 207 U.S. at 168.

Restrictions on the state's broad discretion are limited. Certainly, the state may not manipulate boundaries for purposes of race discrimination, *Gomillion v. Lightfoot*, 364 U.S. 339, 343-44 (1960), nor may a state exclude qualified voters if others *similarly impacted and situated* are granted voting rights, *Kramer v. Union Free School Dist.*, 395 U.S. 621, 632-33 (1969); *Cipriano v. City of Houma*, 395 U.S. 701, 702, 806 (1969); *Phoenix v. Kolodziejski*, 399 U.S. 204, 212-13 (1970). However, this Court has long recognized the power of the state to regulate local government creation. *Holt Civic Club v. Tuscaloosa*, 439 U.S. 60, 68-69 (1978); *Lockport v. Citizens for Community Action*, 430 U.S. 259, 272 (1977).

The rational basis test has been applied by federal courts to statutes which exclude nonresidents from voting on a change in municipal organization. The California Supreme Court recognized these cases, citing *City of New York v. State*, 158 A.D.2d 169, 557 N.Y.S.2d 914 (N.Y. App. Div. 1990), *aff'd*, 76 N.Y.2d 479, 562 N.E.2d 118; *St. Louis County, Mo. v. City of Town & Country*, 590 F. Supp. 731 (E.D. Mo. 1984)[5]; *Moorman v. Wood*, 504 F. Supp. 467 (E.D.

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[5] In *St. Louis County, Mo. v. City of Town & Country*, county and unincorporated area residents sued various municipalities in the process of annexing unincorporated territory within the county. 590 F. Supp. at 732. Pursuant to state law, the municipalities held elections and the vote was limited to residents of the annexing municipality and the unincorporated area territory to be annexed. *Id.* at 733-44. Plaintiffs raised essentially the same arguments raised by Petitioners here, *inter alia*, that municipalities were annexing areas which were a major source of revenue to the county and that the loss of those revenues would severely impact and curtail the municipal services provided to the unincorporated areas. *Id.* at 736. The court ruled

Ky. 1980); *Givorns v. City of Valley*, 598 So. 2d 1338 (Ala. 1992); *Board of Supervisors*, 3 Cal. 4th at 922 (Pet. App. at 22a.)

Most recently, this Court, in *Burdick v. Takushi*, 112 S. Ct. 2059, 2061 (1992), reviewed an election statute placing a total ban on write-in candidates in state elections. The Court applied the rational basis test despite the absolute ban. *Id.* at 2064. In *Burdick*, the Court explained that a burden on the right to vote does not invoke strict scrutiny unless voting rights are subjected to severe restrictions. *Id.* at 2063. If, however, the law only imposes "reasonable, nondiscriminatory restrictions," the law need only bear a rational relationship to the state's interest. *Id.* at 2064.

That restriction of the franchise to those within the proposed new city boundaries as set forth in section

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that "impact alone is not enough to give the latter a right to vote. Just as the residents of a municipality may take actions which affect those residing outside the municipality, even though the latter are not allowed to vote, (*Holt*, 439 U.S. at p. 69), so may the residents of the geographic area allowed to vote here approve annexations which affect those who reside in surrounding areas of the County." *Id.* at 737.

Likewise, In *Little Thunder v. State of South Dakota*, 518 F.2d 1253, 1256 (8th Cir. 1975), the court recognized that voters have a constitutionally recognized interest in an election of government officials that will "exercise general governmental functions" over the disenfranchised individuals. *Id. Little Thunder* is distinguishable and consistent with this case: to wit, it concerned a statutory scheme which disenfranchised residents in unorganized counties in elections for officials that would exercise general government authority over those very individuals. In this case, there is no suggestion that the proposed new city would exercise any general governmental power over those not entitled to vote.

57103 is a reasonable restriction linked to a legitimate state purpose. The exclusion of other residents of the county is not an "invidious or suspect classification" as existed in *Carrington* or in *Evans v. Cornman*, 398 U.S. 419 (1969) but necessary to the orderly growth and development of the State of California as set forth in the Cortese-Knox Act. Cal. Gov't Code § 56001 (West Supp. 1993). Consequently, the California Supreme Court was correct in finding that there was no "suspect classification involved" and properly invoked the deferential standard of review in accordance with this Court's ruling in *Burdick*.[6]

Petitioner argues that the California Supreme Court misapplied the findings of *Lockport v. Citizens for Community Action*, 430 U.S. 259 (1978) (Pet. at 22-28.) In *Lockport*, a New York law provided for concurrent majorities in order to create a new county; a majority of the voting city dwellers and a majority of noncity dwellers. *Id.* at 262. Two separate votes on the referendum were conducted. Both times a majority of the city voters approved the referendum while a majority of the noncity dwellers did not. *Id.* Of total votes cast, a majority of the entire county favored the charter. *Id.* A constitutional challenge ensued

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[6] We believe that the dissenting argument in *Burdick* also supports Respondent's position. The history of the legislation was highly relevant to the dissenting Justice's conclusion that the election law was overly restrictive and not related to a rational state purpose. No such restrictive history is present in this case. In fact, the California Supreme Court found a responsive state legislative process which protects against arbitrary discretion. *Board of Supervisors*, 3 Cal. 4th at 923-24 (Pet. App. at 24a-25a.)

based upon the Equal Protection Clause Ruling that there were genuine differences in the relevant interests of the city and noncity dwellers, this Court unanimously upheld the concurrent-majority requirement. *Id.* at 272. Additionally, this Court did not find any "invidious" discrimination in the statutory scheme. *Id.*

Petitioner seeks to distinguish *Lockport* on the basis that no voting rights are granted in this case to unincorporated area voters living outside the proposed city boundaries, and therefore strict scrutiny should apply. Petitioner cites *Rosario v. Rockefeller*, 410 U.S. 752, *reh'g denied*, 411 U.S. 959 (1973), and *Kusper v. Pontikes*, 414 U.S. 51 (1973), for the proposition that absolute disenfranchisement subjects the voting scheme to strict scrutiny. (Pet. at 26-27.)[7] These citations are misplaced. Absolute disenfranchisement of otherwise similarly situated and interested qualified electors may subject a voting restriction to strict scrutiny. But in this case, we do not have such a class and no state recognizes such a class of voters.

The error in Petitioner's argument is that it assumes that unincorporated area residents have a constitutionally

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[7] In *Rosario*, the State of New York enacted the most severe registration restrictions in the nation on previously unaffiliated voters. 410 U.S. at 763. In upholding the restriction, the Court ruled that the restriction was reasonably related to an important state goal. *Id.* at 760. Petitioner argues that since the registration restrictions did not absolutely preclude a voter from affiliating, it is to be contrasted with our case, where an absolute prohibition on voting to nonresidents. (Pet. at 26-27.) However, in our case, these nonresidents do not have a similar interest in the election as residents, nor are they similarly situated.

protected interest in the proposed city. These nonresident unincorporated area voters are not as interested in the incorporation as the proposed new residents since they will not be subject to the representative government of the proposed new city, nor will they be required to submit to any of the city's police power.

The ruling in *Burdick* also provides guidance. In applying the rational relationship test to a total ban on write-in voting, the Court viewed the ban as a reasonable restriction. In this case nonresidents were found by the trial court, and a unanimous California Supreme Court, to be relatively disinterested in the incorporation. *Board of Supervisors*, 3 Cal. 4th at 923. (Pet. App. at 24a.) Certainly these nonresidents' interests are more attenuated than those interests reviewed in *Burdick*. Therefore, application of the rational basis test is appropriate.

Moreover, even though relatively disinterested, these nonresidents are protected in California through the statutory process. The Cortese-Knox Act has numerous provisions requiring LAFCO to mitigate financial impacts upon nonresidents through the statutorily required administrative proceedings. Rather than provide a lengthy recitation of the Cortese-Knox Act's safeguards and how they were applied in this case, Respondent respectfully refers this Court again to the opinion of the California Supreme Court. *See Board of Supervisors*, 3 Cal. 4th at 904-912, 922-925. (Pet. App. at 2a-10a, 22a-24a.)

In light of this reality, Petitioner attempts to focus on Sacramento County as the governmental entity concerned. Petitioner cites *Holt* for the theory that strict scrutiny is required. (Pet. at 25.) However, *Holt* denied

voting rights to a group which *was* subjected to the general government and police powers of a city, unlike the facts of this case. *Holt*, 439 U.S. at 69. In fact, *Holt* recognizes that "extra-territorial impacts" alone are not sufficient to warrant the right to vote. *Id.*

If this Court accepts Petitioner's "impacts" analysis, an individual owning real property within the proposed city boundaries, but not domiciled there, must be enfranchised since he or she too will be impacted by incorporation. Others, as yet unidentified, may also be impacted and thus need to be enfranchised. But this approach defies the history of residency requirements in voting rights cases.

Residency is a prerequisite long identified as a proper restriction on the franchise. *Hill v. Stone*; 421 U.S. 289, 297 (1975). It, along with age and citizenship, are historically rooted in our democratic principles. *Id.* at 297. The California Supreme Court recognized the need to clarify its own rulings in order to avoid precisely the type of impacts analysis advanced by Petitioner. While the California Supreme Court recognized that *Lockport* "did not decide what standard of deference applies when voters with a more *diffuse* interest in an incorporation are *excluded* from voting to confirm the result of a legislative scheme that tries to balance competing interests in the politically freighted process," it recognized that the rational relationship test is entirely consistent with analogous decisions. *Board of Supervisors*, 3 Cal. 4th at 917 (Pet. App. at 15a-16a.)

II.

SECTION 57103 DOES NOT "FENCE OUT" A CLASS OF VOTERS BECAUSE OF THE WAY THEY MAY VOTE.

Petitioner's last argument, that Section 57103 "fences out" a class of voters, reinvokes the ruling in *Carrington*. (Pet. at 28.) *Carrington's* prohibition against "fencing out" a class of voters has no application in this case for the following reasons.

First, no state recognizes the interests of Petitioner as a class of "otherwise qualified electors."

Second, Petitioner mischaracterizes the ruling of the California Supreme Court. The California Supreme Court did not rule, as Petitioner states at page 29, that "Section 57103 fairly serves a legitimate state purpose 'for if large relatively disinterested majorities could veto incorporation, the state's interest in orderly growth and development would be thwarted.' " Rather, the ruling was:

> In section 56001, the legislature announced a policy 'to encourage orderly growth and development . . . *essential to the social, fiscal, and economic well-being of the state,*' and stated that 'the logical formation and determination of local agency boundaries is an important factor in promoting orderly development. . . . The Legislature further finds and declares that this policy should be effected by the logical formation and modification of the boundaries of local agencies.'
>
> *The foregoing sufficiently shows a legitimate purpose in enacting section 57103.* And we conclude that section 57103 is fairly related to the

> Legislature's declared purpose, for if large, relatively disinterested majorities could veto incorporation decided through the Cortese-Knox Act's elaborate process, the result might well hinder orderly growth and development. Thus, there is no invidious discrimination of the type referred to in *Lockport, supra*, 430 U.S. 259.
>
> Unlike in *Fullerton, supra*, 32 Cal.3d 779, which involved a discretionary agency decision to hold an election, the Cortese-Knox Act was constructed with a mighty bulwark against the exercise of arbitrary discretion. The Act accommodates competing local governmental and private interests, narrowly channeling the commission's ultimate determination before the territory's voters consider the decision. The election merely asks the affected residents to confirm that they desire self-government. *To deny the Legislature the authority to let the potentially incorporating territory's voters have the final say in the matter would be to lessen political participation, not increase it.* We do not believe that result is required by our federal and state constitution. *Board of Supervisors*, 3 Cal. 4th at 923-24 (Pet. App. at 24a-25a.) [Emphasis Added]

This ruling does not conflict with this Court's prior decisions. The voters were not excluded *solely* because of the way they may vote, but because of the Legislature's declaration of intent in section 56001 and the Cortese-Knox Act's accommodation of their interests during the administrative hearing before LAFCO.

The California Supreme Court found that the Cortese-Knox Act contained a legitimate intent rationally related to section 57103. The statute, therefore, not only

serves a constitutionally permissible purpose but is essential to the social, fiscal, and economic well-being of the State of California.

CONCLUSION

Based on the foregoing, the Petition should be denied.

Respectfully submitted,

NANCY C. MILLER
(Counsel of Record)
KIRK E. TROST
MATINA R. KOLOKOTRONIS
HYDE MILLER & OWEN
428 "J" Street, Suite 400
(916) 447-7933
Attorneys for Respondent, Sacramento Local Agency Formation Commission